§ 404.520 Referral of overpayments to the Internal Revenue Service for tax refund offset—General.

(a) The standards we will apply and the procedures we will follow before requesting the Internal Revenue Service (IRS) to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§ 404.520 through 404.526. These standards and procedures are authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A), as amended by section 5129 of the Omnibus Budget Reconciliation Act of 1990, and as implemented through Department of the Treasury regulations at 26 CFR 301.6402–6T and Department of Health and Human Services regulations at 45 CFR Part 31.

(b) We will use the IRS tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Secretary of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to monthly Social Security benefits under title II of the Act. We will refer an overpayment to the Secretary of the Treasury for offset against tax refunds no sooner than 3 months after our right to collect the overpayment first accrued and no later than 10 years after our right to collect the overpayment first accrued.

[56 FR 52468, Oct. 21, 1991]

§ 404.521 Notice to overpaid individual.

A request for reduction of an IRS tax refund will be made only after we determine that an amount is owed and past due and provide the overpaid individual with 60 calendar days written notice. Our notice of intent to collect an overpayment through IRS tax refund offset will state:

(a) The amount of the overpayment;

(b) That unless, within 60 calendar days from the date of our notice, the overpaid individual repays the overpayment, sends evidence to us at the address given in our notice that the overpayment is not past due or not legally enforceable, or asks us to waive collection of the overpayment under section 204(b) of the Act, we intend to seek collection of the overpayment by requesting that the IRS reduce any amounts payable to the overpaid individual as refunds of Federal income taxes by an amount equal to the amount of the overpayment;

(c) The conditions under which we will waive recovery of an overpayment under section 204(b) of the Act;

(d) That we will review any evidence presented that the overpayment is not past due or not legally enforceable;

(e) That the overpaid individual has the right to inspect and copy our records related to the overpayment as determined by us and will be informed as to where and when the inspection and copying can be done after we receive notice from the overpaid individual that inspection and copying are requested.

[56 FR 52468, Oct. 21, 1991]

§ 404.522 Review within SSA that an overpayment is past due and legally enforceable.

(a) *Notification by overpaid individual.* An overpaid individual who receives a notice as described in § 404.521 has the right to present evidence that all or part of the overpayment is not past due or not legally enforceable. To exercise this right, the individual must notify us and present evidence regarding the overpayment within 60 calendar days from the date of our notice.

(b) *Submission of evidence.* The overpaid individual may submit evidence showing that all or part of the debt is not past due or not legally enforceable as provided in paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in referral of the overpayment to the IRS, unless the overpaid individual, within this 60-day time period, has asked us to waive collection of the overpayment under section 204(b) of the Act and we have not yet determined whether we can grant the waiver request. If the overpaid individual asks us to waive collection of the overpayment, we may ask that evidence to support the request be submitted to us.

(c) *Review of the evidence.* After a timely submission of evidence by the overpaid individual, we will consider all available evidence related to the